

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05CV 11161 RGS
)	
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

ANSWER OF DEFENDANT CUMBERLAND FARMS, INC.

Defendant Cumberland Farms, Inc. ("CFI" or "the Company") hereby answers the Complaint And Demand For Jury Trial ("Complaint") in this matter as follows:

The opening paragraph of the Complaint is merely descriptive of the action and requires no response but if a response is called for CFI denies this paragraph.

1. CFI denies Paragraph 1.
2. CFI admits Paragraph 2.
3. CFI admits Paragraph 3.
4. CFI admits Paragraph 4.
5. CFI admits Paragraph 5.
6. CFI admits that it hired Mr. Udemba ("Udemba") on or about May 20, 1991, that he is black and from Nigeria and that his title at the time he was hired was Project Manager but denies the remainder of Paragraph 6.
7. CFI denies Paragraph 7.
8. CFI admits that Udemba possessed a degree from the University of Kansas when he was hired but denies the remainder of Paragraph 8.

9. CFI admits that Udemba's starting salary when hired was \$23,000 per year but denies the remainder of Paragraph 9.

10. CFI denies Paragraph 10.

11. CFI denies Paragraph 11.

12. CFI denies Paragraph 12.

13. CFI admits that Udemba has received ratings on his performance evaluations of "good", "outstanding" or "superior" but denies the remainder of Paragraph 13.

14. CFI admits Paragraph 14.

15. CFI admits that Andrew Beland was made a supervising Project Manager in December of 1992, and that he is Caucasian, but denies the remainder of Paragraph 15.

16. CFI admits Paragraph 16.

17. CFI denies Paragraph 17.

18. CFI denies Paragraph 18.

19. CFI denies paragraph 19.

20. CFI admits that Foster Macrides, Vice President Human Resources, issued a memorandum dated October 1, 1992 addressed to "All Department Heads" announcing "...the lifting of the wage freeze" and "a general wage increase" but denies the remainder of Paragraph 20.

21. CFI admits Paragraph 21.

22. CFI denies Paragraph 22.

23. CFI admits that Beland left his position in December 1994 but denies the remainder of Paragraph 23.

24. CFI denies Paragraph 24.

25. CFI denies Paragraph 25.

26. CFI denies Paragraph 26.

27. CFI admits that it hired Lorraine Higgins in 1995 to fill the position of office supervisor but denies the remainder of Paragraph 27.

28. Paragraph 28 requires no response but if a response is required CFI denies Paragraph 28.

29. CFI denies Paragraph 29.

30. CFI admits that Kevin McCabe did not have an engineering degree when hired to work for CFI, but denies the remainder of Paragraph 30.

31. CFI denies Paragraph 31.

32. CFI believes that Udemba passed the LSP examination on August 26, 1997, but denies the remainder of Paragraph 32.

33. CFI denies Paragraph 33.

34. CFI denies Paragraph 34.

35. CFI denies Paragraph 35.

36. CFI denies Paragraph 36.

37. The first two sentences of Paragraph 37 require no response but if a response is required CFI denies them, and CFI denies the remainder of Paragraph 37.

38. CFI admits the first sentence of paragraph 38 but denies the remainder of Paragraph 38.

39. CFI denies Paragraph 39.

40. CFI denies Paragraph 40.

41. CFI denies Paragraph 41.

42. CFI denies Paragraph 42.

43. CFI denies Paragraph 43.

44. CFI admits Paragraph 44.

45. CFI admits Paragraph 45.

46. CFI admits that the organizational chart dated 10/07/2003 shows reporting lines for Environmental Engineers, Office Manager, Director of Construction and Project Manager/UST, but denies the remainder of Paragraph 46.

47. CFI admits Paragraph 47.

48. CFI denies Paragraph 48.

49. CFI admits that the organizational chart dated 10/07/2003 shows Muriel Tyler as the Office Manager with several positions reporting to her, including Construction Coordinator, Expense Coordinator, and three AP Coordinators, but denies the remainder of Paragraph 49.

50. CFI denies Paragraph 50.

51. CFI denies Paragraph 51.

52. CFI denies Paragraph 52.

53. CFI denies Paragraph 53.

54. CFI denies Paragraph 54.

55. CFI denies Paragraph 55.

56. CFI denies Paragraph 56.

57. CFI denies Paragraph 57.

58. CFI denies Paragraph 58.

59. CFI denies Paragraph 59.

60. CFI denies Paragraph 60.

61. CFI denies paragraph 61.
62. CFI denies Paragraph 62.
63. CFI denies Paragraph 63.
64. CFI denies Paragraph 64.
65. CFI denies Paragraph 65.
66. CFI denies Paragraph 66.
67. CFI denies Paragraph 67.
68. CFI denies Paragraph 68.
69. CFI denies Paragraph 69.
70. CFI denies Paragraph 70.
71. CFI denies Paragraph 71.
72. CFI denies Paragraph 72.
73. CFI denies Paragraph 73.
74. CFI denies Paragraph 74.
75. CFI repeats its responses to Paragraphs 1-74, above.
76. CFI admits Paragraph 76.
77. CFI denies Paragraph 77.
78. CFI repeats its responses to Paragraphs 1-77, above.
79. CFI admits Paragraph 79.
80. CFI denies Paragraph 80. Further answering, CFI denies that Udemba is entitled to any relief.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Court lacks jurisdiction over Plaintiff's claim under MGL c.151B because Plaintiff has failed to exhaust his administrative remedies under that statute.

THIRD DEFENSE

The Complaint is barred by the applicable statutes of limitation.

FOURTH DEFENSE

The Complaint is barred by the doctrine of laches.

FIFTH DEFENSE

The Plaintiff has failed to exhaust available internal remedies.

SIXTH DEFENSE

All actions taken by the Defendant were undertaken for legitimate business reasons.

SEVENTH DEFENSE

The Plaintiff has failed to mitigate his damages.

Dated: October 27, 2005

CUMBERLAND FARMS, INC.

By Its Attorneys

/s/ Philip J. Moss

Philip J. Moss, Esq., BBO# 358020

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CERTIFICATE OF SERVICE

I, Philip J. Moss, attorney for Cumberland Farms, Inc., hereby certify that I electronically filed with the Clerk of Court the Answer of Defendant Cumberland Farms, Inc., using the CM/ECF system which will send notification of such filing to the following:

Aderonke O. Lipede, Esq. (BBO # 567431)
434 Massachusetts Avenue, Suite 401
Boston, MA 02118

Dated: October 27, 2005

/s/ Philip J. Moss

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